(1)
Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

In the Supreme Court of the United States

THOMAS J. DILLON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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77 pp

QUESTION PRESENTED FOR REVIEW

I. IN A PETITION TO VACATE A JUDGMENT PURSUANT TO 28 U.S.C. § 2255, MUST A PETITIONER ALLEGE THAT HE WOULD NOT HAVE PLED GUILTY IF HE HAD KNOWN OF THE LIABILITY OF HIS SUPPRESSION OF SEARCH ISSUES OR MUST HE ONLY ALLEGE THAT HE WOULD NOT HAVE WAIVED THOSE SEARCH ISSUES BECAUSE HE STILL MIGHT HAVE ENTERED A CONDITIONAL PLEA OF GUILTY PRESERVING HIS APPEAL ON THE SEARCH ISSUES SHOULD HE HAVE NOT PREVAILED ON THE SUPPRESSION MOTIONS?

LIST OF ALL PARTIES TO THE PROCEEDING

The following is a list of all parties to the proceeding in the United States Court of Appeals for the Eleventh Circuit whose judgment is sought to be reviewed in this case:

Thomas J. Dillon

United States of America

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OPINIONS BELOW

The United States District Court for the Middle District of Florida filed its Order on April 30, 2001 and denied the Petitioner's motion to vacate, set aside or correct his sentence and is unpublished and has been reproduced in the Appendix at pp. 5a-8a. On May 25, 2001 the United States District Court for the Middle District of Florida denied the Petitioner's request for an issuance of a Certificate of Appealability and is unpublished and has been reproduced in the Appendix at pp. 9a-11a. The United States Court of Appeals for the Eleventh Circuit entered an Order on May 17, 2002 affirming in part, vacated and remanded in part the decision of the United States District Court for the Middle District of Florida and is unpublished and has been reproduced in the Appendix at pp. 12a-13a. On August 2, 2002, the United States Court of Appeals for the Eleventh Circuit denied the Petitioner's Petition for Rehearing En Banc and is unpublished and has been reproduced in the Appendix at pp. 1a-2a.

SUPREME COURT JURISDICTION

The Order of the United States Court of Appeals for the Eleventh Circuit was filed on August 2, 2002 and has been unpublished and been reproduced in the Appendix at pp. 1a-2a. This Petition for Writ of Certiorari is filed pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL AND/OR STATUTORY PROVISIONS CONSTRUED

United States Constitution
Fourth Amendment

Unreasonable searches and seizures. - The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon a probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution
Fifth Amendment

Criminal actions - Provisions concerning - Due process of law and just compensation clauses. - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use; without just compensation.

United States Constitution
Sixth Amendment

Rights of the accused. - In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial,

by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATEMENT OF THE CASE

The Motion was filed on April 11, 1997, seeking relief from a conviction on August 19, 1988, based on a plea of guilty for possession of an unregistered silencer. It was Petitioner's first § 2255 Motion.

As grounds for relief, Petitioner claimed that his original trial counsel (counsel) was ineffective in five instances, only two of which were presented for review: (1) failure to move to suppress evidence illegally obtained from searches of his residence and safe deposit box in violation of the Fourth and Fifth Amendments to the United States Constitution; and (2) failure to appeal the sentence after Petitioner instructed counsel to do so. To support the motion, Petitioner filed a memorandum and exhibits, including affidavits, incorporated by reference in his § 2255 motion.

Respondent filed an Answer under seal to Petitioner's § 2255 Motion on September 10, 1997. Respondent denied that Petitioner was entitled to any relief.

On April 30, 2001, the District Court entered an Order denying Petitioner's § 2255 motion and is unpublished and has been reproduced in the Appendix at pp. 5a-8a. Without holding an evidentiary hearing, the Court summarily concluded that Petitioner's guilty plea waived his Fourth and

Fifth Amendment claims and that Petitioner "has not alleged any prejudice from not having had an appeal, nor what meritorious issues he would have raised on appeal." The District Court entered its Judgment on May 1, 2001 and has been unpublished and been reproduced in the Appendix at pp. 3a-4a.

Petitioner's Notice of Appeal was filed on May 18, 2001, and treated as a request for a Certificate of Appealability by the District Court. On May 25, 2001, the District Court entered an Order denying a COA and has been unpublished and reproduced in the Appendix at pp. 9a-11a. On July 9, 2001 the Petitioner filed a Motion for Certificate of Appealability in the United States Court of Appeals for the Eleventh Circuit. On September 5, 2001 an Order from the United States Court of Appeals was entered granting the Appellant's motion for certificate of appealability. On May 17, 2002, a Judgment from the United States Court of Appeals for the Eleventh Circuit was entered affirming in part, vacated and remanded in part the decision of the district court and is unpublished and has been reproduced in the Appendix at pp. 12a-13a. On May 31, 2002, the Petitioner filed a Petition for Rehearing En Banc. On August 2, 2002, the United States Court of Appeals for the Eleventh Circuit entered and Order denying the Petition for Rehearing En Banc and is unpublished and has been reproduced in the Appendix at pp. 1a-2a.

STATEMENT OF FACTS

No hearing was held on Petitioner's allegations. Respondent failed to contradict these allegations in its Answer. Thus in the case's current posture, Petitioner's allegations relevant to the three issues presently before this Court are undisputed.

Petitioner's essential allegations are that counsel was ineffective when he failed to move for suppression of evidence seized during searches of Petitioner's residence and safe deposit box in violation of the Fourth and Fifth Amendments to the United States Constitution. Petitioner would not have waived these issues and entered a plea of guilty had he been properly advised as to the merits of his suppression claims. These allegations were supplemented in Petitioner's supporting memorandum. A total of three searches occurred in this case. Specifically, Petitioner claimed that counsel was ineffective in failing to move for the suppression of evidence obtained in two searches of his residence on June 29, 1987, and a third search of his safe deposit box on October 1, 1987. Petitioner stated that he was not advised by counsel that grounds for the suppression of evidence existed and that he did not waive these issues. Demurring to the allegations, Respondent simply asserted that Petitioner waived any constitutional violations surrounding his arrest and the seizure of evidence as a result of his plea of guilty.

1. Arrest of Petitioner and Search of Residence on June 29, 1987

Special Agent Mark C. Broome prepared two affidavits in which he described Petitioner's arrest. Broome's first affidavit stated that agents of the Federal Bureau of Investigation (FBI) had informed him that an arrest warrant in the Southern District of Ohio had been issued for Petitioner in 1985. (First Broome Aff. p. 1, App. p. 30a) Without obtaining a warrant for Petitioner's arrest in the Middle District of Florida, Broome and other agents located Petitioner and on June 29, 1987, he was arrested outside his residence after agents had enticed him from his apartment. (Id. p. 1-2, App. pp. 30a-31a) Broome alleged that Petitioner asked to reenter his apartment when placed into custody and

stated that Petitioner was asked about weapons, responding that a firearm was on a television in his apartment. (Id. p. 2, App. p. 31a) Broome claimed that he recovered a pistol from a television some distance inside the apartment when he entered to determine whether other persons were present. (Id., App. 31a) Broome then further interrogated Petitioner about the location of any other weapons and stated that he obtained incriminating responses. Broome acknowledged that Petitioner refused to agree to a consensual search of the apartment. (Id., App. p. 31a)[1]

Broome's second affidavit alleged that later on June 29, 1987, he and other agents obtained and executed a search warrant for Petitioner's residence for firearms. (Second Broome Aff. p. 8, App. p. 49a) At that time, two handguns were found in the headboard of the bed according to Broome. Broome also asserted that, among other items, he had observed a key envelope from the First National Security Center (FNSC) in plain view. (Id. pp. 8-9, App. pp. 49a-50a)[2] After execution of the residence warrant, Broome made the return on July 2, 1987, listing five items. No key envelope appears on the return. (Residence Warrant p. 2,

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[1] Essentially, the same allegations were contained in Broome's second affidavit concerning Petitioner's arrest on June 29, 1987. (Second Broom Aff. pp. 7-8, App. pp. 48a-49a) In both affidavits, Broome claimed that the initial search was cursory, that no weapons other than the one seized from the television were in plain view, and that no search was conducted for concealed weapons. (First, Broome Aff. p. 2, App. p. 31a; Second Broome Aff. p. 8, App. p. 49a)

[2] The second affidavit did not indicate why a key envelope would have been immediately incriminating. (Second Broome Aff. p. 9, App. p. 50a)

App. p. 31a)

Petitioner alleged that Broome had no evidence that other persons lived in or were present in the apartment and that incriminating questions were asked without being informed of his Miranda rights. Petitioner stated that at the time he was placed into custody no weapon was within the immediate area of his control. Agents broke a lock to obtain guns they claimed were in the headboard. Further, Petitioner alleged that no key envelope was anywhere in his apartment. In his affidavit, Petitioner stated that when agents arrested him at his home on June 29, 1987, he did not ask to reenter his apartment and never answered any incriminating questions regarding additional firearms in the apartment. He reiterated that no FNSC key envelope was in his apartment. (Dillon Aff. p. 1, App. p. 22a)

Petitioner submitted additional affidavits concerning the searches on June 29, 1987. In her affidavit, Julianne Jackson stated that she was an employee of Petitioner's apartment complex and that on that date 18 to 24 law enforcement officers entered Petitioner's apartment immediately after he was arrested, staying for at least 20 to 30 minutes. (Jackson Aff. p. 1, App. p. 10a) In addition, she saw another witness to this entry named Matthew Fromsdorf. (Id., App. p. 10a) The affidavit of Matthew Fromsdorf stated that he was a next door neighbor of Petitioner and that on June 29, 1987, 15 to 19 law enforcement officers arrested Petitioner and immediately after Petitioner was taken away, a number of the FBI agents remained in Petitioner's apartment for at least an hour. (Fromsdorf Aff. pp. 1-2, App. pp. 14a-15a)

2. Search of Petitioner's Safe Deposit Box

Based in part on information and evidence illegally obtained during the two searches of Petitioner's residence on June 29, 1987, Broome obtained a warrant on October 1, 1987, to search a safe deposit box at the FNSC. (Deposit Box Warrant, App. p. 34a) Broome described the June 29, 1987, arrest of Petitioner outside his apartment. (Second Broome Aff. p. 7-8, App. pp. 48a-49a) During the June 29, 1987, search of Petitioner's residence, Broome claimed that he discovered in plain view two envelopes, including an FNSC key envelope but the primary object of the search, a .22 caliber handgun, was not located in the apartment. (Id. p. 8-9, App. pp. 49a-50a)

Using information allegedly obtained during the execution of the residence warrant, Broome determined that a person answering Petitioner's description had rented an FNSC safe deposit box. (Id. p. 9-10, App. pp. 50a-51a) Following a meandering trail of speculation, Broome contended that the failure to find a .22 cal. handgun at the residence combined with the size of the safe deposit box created probable cause to believe that this pistol would be secreted in that place. (Id. p. 9-13, App. pp. 50a-54a)

On October 2, 1987, three months following the searches of Petitioner's apartment, his safe deposit box was searched. The deposit box warrant stated that the evidence being sought was "[a] .22 cal. handgun, silencer, United States currency, or any other handgun ...." (Deposit Box Warrant p. 1-2, App. pp. 43a-44a) On October 5, 1987, the return stated that the entire deposit box and all contents were seized and inventoried. Numerous items included on the inventory were not named in the warrant, including photographs and documents. (Id. p. 3-4, App. pp. 45a-46a)

3. Defective Warrants

The warrant issued on June 29, 1987, stated vaguely that it was for "firearms which are evidence of a violation of ... possession of a firearm by a fugitive from justice," without specifically describing what particular firearms would be found. (Residence Warrant p. 3, App. p. 32a) Further, this warrant was limited to firearms but other items outside the scope of the warrant were seized, including documents (such as an FNSC key envelope) later used to support the safe deposit box warrant.

The first Broome affidavit alleged that Petitioner was involved in a federal fugitive matter based simply on an outstanding warrant issued in Ohio in 1985. No information in the affidavit was provided to support Broome's conclusion that Petitioner had been arrested on this warrant or even knew about its existence. (First Broome Aff. p. 1, App. p. 30a) Nothing in either the first or second Broome affidavits stated that agents were justified in making even a cursory search of Petitioner's apartment for other persons. (First Broome Aff. p. 2, App. p. 31a; Second Broome Aff. p. 7-8, App. pp. 48a-49a)

Similarly, the first Broome affidavit stated that a Knoxville police officer had informed him that Petitioner was a suspect in a homicide on June 15, 1987, but the basis for such a suspicion was not stated. (First Broome Aff. p. 1, App. p. 30a) This affidavit also relied on an alleged confidential informant but the information provided was more than a year stale:

> "S[pecial] A[gent] Tarbox told me that a reliable confidential informant told him on March 11, 1987 that in March, 1986 he saw

> [Petitioner] in possession of a .22 caliber handgun with a silencer ..."

(First Broome Aff. p. 4, App. p. 33a) No corroboration on the veracity of the informant was provided. (Id., App. p. 33a)[3]

Both affidavits used to support the two search warrants contained false and fraudulent allegations. Petitioner denied that he was allowed to step inside his apartment to dress. (First Broome Aff. p. 2, App. p. 31a-Second Broome Aff. p. 7, App. p. 47a) Petitioner never made any statement concerning any additional guns in his apartment. (Id.; First Broome Aff. p. 2, App. p. 21a; Second Broome Aff. p. 8, App. p. 48a)

Further, both affidavits stated that Lt. David Mase told Broome that two persons were in a motel room in Knoxville where an alleged murder had occurred. (First Broome Aff. p. 3, App. p. 32a-Second Broome Aff. p. 5, App. p. 46a) Mase's affidavit was submitted by Petitioner and Mase stated that he never communicated to any one in the FBI that two persons were in this motel room. (Mase Aff. p. 1, App. pp. 16a-17a) Likewise, both affidavits stated that food for two had been delivered to this motel room. (First Broome Aff. p. 3, App. p. 32a-Second Broome Aff. p. 5, App. p. 47a) The affidavit of Gary Nordmeyer stated that he delivered food to this motel room and saw only one person; he never told anyone that he delivered food for two people. (Nordmeyer Aff. p. 1, App. p. 18a) Petitioner alleged that Broome made a material omission by not including information that no

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[3] The second Broome affidavit suffers from these same defects. (Second Broome Aff. p. 1-13, App. pp. 42a-53a).

description was available of any alleged second person in this motel room.

In the second Broome affidavit, additional material omissions were that Broome failed to inform the issuing Magistrate that Petitioner was never a suspect in the criminal activity described in the warrant regarding a man named William Wickline. (Second Broome Aff. p. 2, App. p. 44a) Broome misrepresented the nature of the charges against a man named Jack Dickie as well as Petitioner's relationship to Dickie. (Second Broome Aff. p. 2-4, App. pp. 44a-46a) Broome did not inform the Magistrate that Jack Dickie neither knew Petitioner nor had any connection with him. Broome omitted any reference to the fact that another person was responsible for the Nolley murder described in the affidavit. (Second Broome Aff. p. 2-3, App. pp. 44a-45a) Broome did not inform the Magistrate that the FBI searched Petitioner's residence after he was arrested but before a warrant was obtained despite the fact that consent was refused. (Id., App. pp. 44a-45a) Broome misled the Magistrate concerning the value of jewelry found in the apartment. (Id. p. 12-13, App. pp. 52a-53a) Additional defects concerned lack of evidence tying Petitioner to the criminal activity described, leaving false impressions, and failing to substantiate the credibility of informants. Knoxville police had never informed Broome that Petitioner was a suspect in the Nolley murder. (Id., App. pp. 52a-53a) Petitioner submitted an FBI laboratory report in which Knoxville police stated that no known suspect for the Nolley murder existed. (FBI Lab Report p. 1, App. pp. 54a-56a)

The first Broome affidavit stated that a reliable informant told Agent Tarbox on March 11, 1987, that in March, 1986, the informant saw Petitioner in possession of a .22 caliber handgun and silencer (First Broome Aff. p. 4,

App. p. 46a); however, the second Broome affidavit stated that Tarbox told Broome this information on September 28, 1987 (Second Broome Aff. p. 6, App. p. 44a) but obtained the information on July 7, 1987 (Id., App. p. 44a).

B. Failure to Appeal

Petitioner alleged that he instructed counsel to appeal his sentence and that no appeal was pursued by counsel. Respondent agreed that Petitioner did not appeal his sentence but did not state any facts concerning the reasons for this omission. Respondent's explanation in its Answer does not address the question of whether Petitioner instructed his attorney to file an appeal.

SUMMARY OF ARGUMENT

Counsel's failure to file a meritorious motion to suppress can only fall below any objective standard of reasonableness and this failure necessarily prejudiced Petitioner because a successful motion to suppress would have excluded the primary evidence in the government's case. Clearly, if Petitioner had known of this complete defense, he would have chosen not to plead guilty and insisted on his right to trial. Petitioner's plea was thus not knowing and intelligent and was therefore involuntary.

The District Court thus erred in summarily dismissing Petitioner's § 2255 motion without a hearing because a sufficient preliminary showing of substantial deprivations of constitutional rights appeared on the face of the record.

REASONS FOR GRANTING THE WRIT

The Eleventh Circuit's decision affirming the district court as to the issue of ineffective assistance on the Fourth Amendment ground is erroneous.

First, it has always been the position of the Appellant that the Appellant felt like, from a layman's point of view, that there was probably a viable search issue in his case. That is why he encouraged his trial counsel to investigate it. That is why he insisted that the issue be preserved in his case in State court in Tennessee. It was the ineffective assistance of trial counsel which resulted in no investigation being done as to the search issue in the District Court in Tampa. If trial counsel had investigated the case as to the search issue in Tampa, he would have learned the facts that are now known to the Appellant and to this Court which are demonstrated through the attached affidavits and the red lined copy of the search warrant. The affidavit in support of this search warrant is replete with lies and fraudulent omissions. A *Franks* hearing on the search issue before the district court would have demonstrated that those fraudulent representations were made to the magistrate in obtaining the search warrants in this case. *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978) From the failure to Mirandize the defendant, the pretext of having him reenter his apartment, the fact that agents remained in his apartment after the arrest to search without a warrant from anywhere from 20 minutes to an hour, the fact that no statements were ever made by the pizza deliveryman in Knoxville nor the Knoxville Police Department to the FBI that two persons were in the room at the time that Mr. Nolley was killed nor was food or drink delivered for two, that the Knoxville Police Department had not identified a suspect at the time of the issuance of any of those warrants as is evidenced by the attached documents,

that there was no evidence of any relationship between Jack Dickie and the Appellant, that there was no evidence of any intent on the part of the Appellant to do any harm to FBI Director Sessions, to the fact that there was never any key envelope from the First National Security Center in Sarasota, Florida in the apartment of the Appellant. Under *Franks*, when all of these matters are red lined from the search warrant, there exists no probable cause to enter the safe deposit box at the First National Security Center thereby mandating a suppression of the only evidence upon which the Defendant was convicted of the silencer offense being challenged in the petition now before the Court. The Petitioner invites the entire Court to spend some time with the attached affidavits and red lined search warrant to fully understand why Mr. Dillon would not have waived this issue in the District Court in Tampa had his attorney not have been ineffective.

The panel also incorrectly applied the legal standard in reaching the prejudice prong of *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 8 L. Ed. 2d 674 (1984). One need not allege they would not have pled guilty had he known about the strength of his search issue. Mr. Dillon alleged that he would not have waived this search issue. If the search issue had gone forward and been successful, the case would have been dismissed. If the district court had decided against him, he may well have entered a conditional guilty plea reserving the right to appeal the suppression issue pursuant to Rule 11(a)(2) of the Federal Rules of Criminal Procedure. It would have been incorrect and presumptuous, therefore, for the Appellant to have alleged that he would not have pled guilty had his attorney effectively pursued the suppression of the unconstitutional search.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be granted.

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 01-12812-CC

[Filed August 2, 2002]

THOMAS JEROME DILLON,)
Petitioner-Appellant,)
versus)
)
UNITED STATES OF AMERICA,)
Respondent-Appellee.)
)

On Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

(Opinion _____ , 11th Cir., 19 _____ , ____ F. 2d).

Before: ANDERSON, HULL and KENNEDY*, Circuit Judges.

*Hon. Cornelia G. Kennedy, U.S. Circuit Judge for the Sixth Circuit, sitting by designation.

PER CURIAM:

The Petition(s) for rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ _____
UNITED STATES CIRCUIT JUDGE

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:97-cv-850-T-23EAJ
(8:87-cr-417-T-23EAJ)

[Filed May 1, 2001]

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
-vs-	)
	)
THOMAS J. DILLON,	)
	)
Defendant.	)
	)

JUDGMENT

Pursuant to and at the direction of the Court, it is:

ORDERED AND ADJUDGED that the Defendant's motion to vacate, set aside or correct sentence, is hereby denied.

SHERYL L. LOESCH, CLERK

/s/ _____
S. Konner, Deputy Clerk

Date: May 1, 2001

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:87-CR-417-T-23EAJ
(8:97-CV-850-T-23EAJ)

[Filed April 30, 2001]

UNITED STATES OF AMERICA,)
)
v.)
)
THOMAS J. DILLON,)
)
Defendant(s).)
)

ORDER

Defendant filed a motion to vacate sentence pursuant to 28 U.S.C. § 2255. He was convicted pursuant to a guilty plea of possession of an registered silencer and sentenced to five years imprisonment. Judgment was entered on January 31, 1987 (*see* docket #53). Petitioner did not appeal. He did file a motion to reduce sentence pursuant to Rule 35, Fed. R. Crim. P., which was denied on August 21, 1989. *See* order in sealed folder, #S-24. Defendant commenced the present

motion to vacate sentence pursuant to § 2255 on April 8, 1997, more than ten years after his conviction. "A 1-year period of limitations shall apply to a motion under this section. The limitation period shall run from the latest of (1) the date on which the judgment of conviction becomes final ...." 28 U.S.C. § 2255. Defendant's conviction became final prior to the enactment of these provisions, consequently, his limitations period began to run on the date of enactment-April 23, 1996-and the limitations period expired in April 23, 1997. Defendant commenced this proceeding on April 8, 1997, two weeks before expiration of the one year limitations period.

Defendant raises five grounds of ineffective assistance of counsel. He alleges that counsel was ineffective (1) for not moving to suppress the fruits of searches of his residence and safe deposit box, (2) for failing to object to falsehoods in the sentencing memorandum relied upon by the court at the time of sentencing, (3) for failing to present evidence of defendant's cooperation with the U.S. Attorney's Office in West Virginia, (4) for being unprepared for the sentencing hearing, and (5) for failing to appeal the sentence. After due consideration, this court is of the opinion that defendant cannot meet the requirements for proving that the was provided with ineffective assistance of counsel.

In *Sims v. Singletary*, 155 F.3d 1297, 1305 (11th Cir. 1998), the Eleventh Circuit discussed ineffective assistance of counsel:

> The law regarding ineffective assistance of counsel claims is well settled and well documented. In *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed.2d 674

> (1984), the Supreme Court set forth a two-part test for analyzing ineffective assistance of counsel claims. According to *Strickland*, first, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. *Strickland*, 466 U.S. at 687, 104 S.Ct. 2052.

The Eleventh Circuit further stated that "[w]hen applying *Strickland*, we are free to dispose of ineffectiveness claims on either of its two grounds." *Sims*, 155 F.3d at 1305 (citing *Oats v. Singletary*, 141 F.3d 1018, 1023 (11th Cir. 1998)). In *Strickland* the Supreme Court held that [t]here is no reason for a court deciding an ineffective assistance claim . . . to address both components of the inquiry if the defendant makes an insufficient showing on one." *Strickland*, 466 U.S. at 697. Under *Strickland*, "the cases in which habeas petitioners can properly prevail on the ground of ineffective assistance of counsel are few and far between." *Waters v. Thomas*, 46 F.3d 1506, 1511 (11th Cir. 1995) (*en banc*) (*quoting Rogers v. Zant*, 13 F.3d 384, 386 (11th Cir. 1994)).

None of the defendant's five grounds have any merit. Defendant cannot premise a claim of ineffective assistance of counsel on the failure to challenge the validity of searches

because defendant's guilty plea waived any such claim. Defendant's claim of ineffective assistance of counsel based on the sentencing memorandum containing false information is belied by the record; defense counsel corrected the inaccuracies regarding defendant's military service during argument at sentencing. *See* p. 35, docket #54. Defendant's assistance provided to the U.S. Attorney's Office in West Virginia was considered by the court, and was apparently the basis for defendant's five year sentence rather than a higher sentence sought by the government. Moreover, this was the basis for the Rule 35, Fed. R. Crim. P., motion to reduce sentence, which was rejected by the sentencing judge. Defendant has not shown that he sustained any prejudice regarding his claim of ineffective assistance of counsel based upon counsel allegedly not knowing that the case would not be controlled by the Sentencing Reform Act of 1984. Similarly, defendant has not alleged any prejudice from not having had an appeal, nor what meritorious issues he would have raised on appeal.

IT IS THEREFORE **ORDERED** that motion to vacate sentence (#78) is DENIED. The Clerk shall enter judgment against defendant and close the associated civil action.

ORDERED in Tampa, Florida, on April 30, 2001.

/s/ _____
Steven D. Merryday
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:87-CR-417-T-23EAJ
(8:97-CV-850-T-24EAJ)

[Filed May 25, 2001]

UNITED STATES OF AMERICA,	)
	)
v.	)
	)
THOMAS J. DILLON,	)
	)
Defendant(s).	)
	)

ORDER

Pending is defendant's notice of appeal (#88) which the court construes as a request for the issuance of a certificate of appealability. On April 24, 1996, the President signed into law amendments to 28 U.S.C. §§ 2244, 2253, 2254, 2255, Appellate Rule 22, and 21 U.S.C. § 848(q). As a result, this Court should grant an application for a certificate of appealability only if the defendant makes a substantial showing of the denial of a constitutional right. To make this substantial showing, defendant "must demonstrate that the issues are debatable among jurists of reason" or "that a court

could resolve the issues [differently]." *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983) (citation omitted). In addition, defendant could show "the questions are adequate to deserve encouragement to proceed further." *Id.*

Specifically, where a district court has rejected a prisoner's constitutional claims on the merits, the defendant must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *See Slack v. McDaniel*, ___ U.S. ___, 120 S. Ct. 1595, 1604 (2000); *Hernandez v. Johnson*, 213 F.3d 243, 248 (5th Cir. 2000. When the district court has rejected a claim on procedural grounds, the defendant must show that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Slack*, 120 S.Ct. at 1604; *Franklin v. Hightower*, 215 F.3d 1196, 1199 (11th Cir. 2000 (*per curiam*).

In this action the court denied the petition on procedural grounds as well as addressing constitutional claims on the merits. Defendant has failed to demonstrate that reasonable jurists would find the court's assessment of the constitutional claims debatable or wrong. Additionally, with regard to the claims denied on procedural grounds, defendant has failed to show, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

It is therefore ORDERED that the notice of appeal (#88), construed as a request for the issuance of a certificate of appealability, is DENIED.

ORDERED in Tampa, Florida, on May 25, 2001.

/s/ _____
Steven D. Merryday
UNITED STATES DISTRICT JUDGE

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Case No. 01-12812

D.C. Docket Nos. 97-00850-CV-T-23 &
87-00417-CR-T-2

[Filed May 17, 2002]

THOMAS JEROME DILLON,	)
	)
Petitioner-Appellant,	)
	)
versus	)
	)
UNITED STATES OF AMERICA,	)
	)
Respondent-Appellee.	)
	)

Appeal from the United States District Court
for the Middle District of Florida

Before ANDERSON, Chief Judge, HULL and KENNEDY*, Circuit Judges.

*Hon. Cornelia G. Kennedy, U.S. Circuit Judge for the Sixth Circuit, sitting by designation.

PER CURIAM:

Petitioner's claim that his counsel was ineffective for failure to advise him concerning a Fourth Amendment challenge to the searches of his home and safety deposit box are without merit. The factual predicate is undermined by paragraph 1(d) of the Plea Agreement in which defendant reveals that he is knowledgeable with respect to such a Fourth Amendment challenge. Moreover, although Dillon asserts on appeal that he would not have pled guilty had counsel advised him in the way he now alleges counsel should have, we note that he did not present that argument to the district court. The judgment of the district court with respect to this claim is affirmed.

With respect to petitioner's claim that he instructed his attorney to appeal and the attorney did not appeal, the government concedes that a remand is necessary. Accordingly, with respect to this claim of ineffectiveness, the case is remanded to the district court for an evidentiary hearing to determine whether defendant instructed his attorney to appeal, and for such other proceedings not inconsistent with this opinion, as the district court may determine to be appropriate.

AFFIRMED IN PART, VACATED AND REMANDED IN PART.

APPENDIX F

IN THE CRIMINAL COURT FOR KNOX COUNTY TENNESSEE

DIVISION II

No. 37597

[Dated December 19, 1995]

STATE OF TENNESSEE	)
	)
vs.	)
	)
THOMAS J. DILLON	)
	)

AFFIDAVIT OF JULIANNE JACKSON

I, Julianne Jackson, being first duly sworn according to law, say as follows:

I was employed at Sun Chase Apartments in Bradenton, Florida on June 29, 1987, and had been so employed for several months prior to that date. I became familiar with an individual known to me as David Schriml. About one month before the arrest in June of 1987 the FBI came out to ask me about Mr. Schriml. They wanted to get information that was confidential and I would not give out that information. The agent told me that he could either go get a subpoena and get the information from me in that way if I did

not cooperate. They also wanted me to let them into Mr. Schriml's apartment. I told them that they would need a search warrant.

The FBI told me that Mr. Schriml may have been involved in drugs and a murder. They had me watch for Mr. Schriml so that I could notify them if I saw him.

On the day of the arrest and search of his apartment, June 29, 1987, I remember a little boy by the name of Matthew Fromsdorf who would have been about 10 years old at the time and who would have observed the agents inside Mr. Schriml's apartment. There were 18 to 24 FBI and other law enforcement agents who went in Mr. Schriml's apartment. Some of the federal agents including FBI agents stayed in Mr. Schriml's apartment after they arrested him and took him away from the apartment. They stayed in the apartment for approximately 20 to 30 minutes.

The FBI agents told me that Mr. Schriml may not have been the one who actually committed the murder that they told me about. They said that someone else may have pulled the trigger.

Further, the deponent sayeth not.

Signed by: Julianne Jackson

Sworn before:

Notary Public on December 19, 1995

APPENDIX G

IN THE CRIMINAL COURT FOR KNOX COUNTY TENNESSEE

DIVISION II

No. 37597

[Dated March 29, 1993]

STATE OF TENNESSEE)
)
vs.)
)
THOMAS J. DILLON)
)

AFFIDAVIT OF DAVID MASE

I, David Mase, being first duly sworn and according to law, say as follows:

On July 27, 1987, I was Lieutenant with the Knoxville Police Department and was assigned to investigate the murder of Richard Keith Nolley in Knoxville. At all times during the investigation I communicated with and cooperated with the FBI in Ohio and Florida. We shared information, and I depended on them to conduct the investigation of the defendant in Florida and the search of his residence and safe deposit box.

In addition, I never communicated to anyone that witnesses saw two persons enter the room of Richard Keith Nolley where he was later found dead.

Further, the deponent sayeth not.

Signed by: David Mase

Sworn before:

Douglas A. Trant, Notary Public on March 29, 1993

APPENDIX H

IN THE CRIMINAL COURT FOR KNOX COUNTY TENNESSEE

DIVISION II

No. 37597

[Dated October 4, 1994]

STATE OF TENNESSEE	)
	)
vs.	)
	)
THOMAS J. DILLON	)
	)

AFFIDAVIT OF GARY NORDMEYER

I, Gary Nordmeyer, being first duly sworn according to law, say as follows:

I was working for Pizza Inn on June 14, 1987. I delivered a pizza to the Comfort Inn near the Intersection of Central Avenue Pike and Merchants Road to the alleged murder victim, Richard Keith Nolley. He was the only person that I saw. I have never told anyone that I delivered food for two people. This is the only information I have about this case.

Further, the deponent sayth not.

Signed by: Gary Nordmeyer

Sworn before:

Notary Public on October 4, 1994

APPENDIX I

IN THE CRIMINAL COURT FOR KNOX COUNTY TENNESSEE

DIVISION II

No. 37597

[Dated September 1, 1995]

STATE OF TENNESSEE	)
	)
vs.	)
	)
THOMAS J. DILLON	)
	)

AFFIDAVIT OF MATTHEW FROMSDORF

I, Matthew Fromdorf, being first duly sworn according to law, say as follows:

On June 29, 1987, I lived at Sunchase Apartments in Bradenton, Florida with my family. We lived next to a gentleman I knew only then to say hello and have since learned his name is Thomas Dillon. On that day, 15 to 19 law enforcement agents came to arrest Mr. Dillon. Approximately one-half dozen of them were FBI agents in suits and the rest were uniformed officers.

They arrested Mr. Dillon around 1:00 p.m. Several of the FBI agents remained in his apartment after he was arrested and taken away for at least an hour. One FBI agent stood at the door with a rifle while the rest were inside.

That night the FBI came to my apartment to interview me and my family. For about one week after that, two FBI agents kept the apartment under surveillance by sitting in a white car where they could observe the apartment.

Further, the deponent sayeth not.

Signed by: Matthew Fromsdorf

Sworn before:

Lisa Wehner, Notary Public on September 1, 1995

APPENDIX J

IN THE CRIMINAL COURT FOR KNOX COUNTY TENNESSEE

DIVISION II

No. 37597

[Dated February 8, 1996]

STATE OF TENNESSEE	)
	)
vs.	)
	)
THOMAS J. DILLON	)
	)

AFFIDAVIT OF THOMAS DILLON

I, Thomas J. Dillon, being first duly sworn according to law, say as follows:

I did not have in my apartment or in my possession on June 29, 1987, or at any other time a key envelope of the First National Security Center in Sarasota, Florida.

Further the deponent sayeth not.

Signed by: Thomas J. Dillon

Sworn before:

Sharon Lane Hunter, Notary Public on February 8, 1996

APPENDIX K

RED-LINED COPY OF THE SEARCH WARRANT OF THE RESIDENCE

SEARCH WARRANT ON WRITTEN AFFIDAVIT

United States District Court
United States of America
Middle District of Florida-Tampa Division

v.

Building 200, Apt.-5922
5922 30th Ave. West
Bradenton, Florida 33529

Docket No. 87-195M

TO: U.S. MARSHAL OR ANY OTHER AUTHORIZED LAW ENFORCEMENT AGENCY

Affidavit(s) having been made before me by the below-named affiant that he has reason to believe that (on the premises known as) a two bedroom apartment designated as Building 200, Apt. 5922, 5922 30th Ave. West, Bradenton, Florida 33529 in the Middle District of Florida there is now being concealed certain property, namely

Evidence of a violation of Title 18, United States Code, Section 922 (g) (former Title 18, United States Code, Section

1202), possession of a firearm by a fugitive from justice and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above-described and the grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

YOU ARE HEREBY COMMANDED to search on or before _____ (not to exceed 10 days) the person or place named above for the property specified, serving this warrant and making the search (in the daytime - 6:00 A.M. to 10:00 P.M.) ~~(at any time in the day or night)~~ and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant to Elizabeth A. Jenkins, United States Magistrate as required by law.

Name of Affiant
Special Agent Mark C. Broome

Signature of ~~Judge or~~ U.S. Magistrate
/s/ _____
Elizabeth A. Jenkins

Date/Time Issued
6/29/87; 7:05 P.M.

Red-Lined Copy of the
Search Warrant of the Residence

RETURN

Date Warrant Received
6/29/87

Date and Time Warrant Executed
6/29/87 8:50 P.M.

Copy of Warrant and Receipt for Items Left With
In residence

Inventory Made in the Presence of
S.A.'s C. Jerry Sellers, Gary L. Royer, Louis E. Barragan, Joseph A. Sponner, Timothy D. Cox

Inventory of Property Taken Pursuant to the Warrant

1) .45 caliber DETONICS pistol with clip loaded with six rounds. Serial No. CR12193.

2) Smith and Wesson .357 magnum Model 19 Revolver. Serial No. 54k9069 with eleven .357 round.

3) Three and one-half Quaalude tablets.

4) Seven and one-half marijuana cigarettes.

5) Thirty Percodan tablets.

Red-Lined Copy of the
Search Warrant of the Residence

CERTIFICATION

I swear that this inventory is a true and detailed account of all the property taken by me on the warrant.

/s/ _____
Mark C. Broome, SA, FBI

Subscribed, sworn to, and returned before me on this date.

/s/ _____
Elizabeth A. Jenkins
U.S. Magistrate

7/2/87
date

Red-Lined Copy of the
Search Warrant of the Residence

AFFIDAVIT FOR SEARCH WARRANT

United States District Court
United States of America
Middle District of Florida-Tampa Division

v.

Building 200, Apt. 5922
5922 30th Ave. West
Bradenton, Florida 33529

Docket No. 87-195M

Name and Address of Judge or U.S. Magistrate

U.S. Magistrate Elizabeth A. Jenkins
United States Courthouse
Suite 215
Tampa, FL 33602

The undersigned being duly sworn deposes and says: That there is reason to believe that

on the premises known as a two bedroom apartment designated as Building 200, Apt. 5922, 5922 30th Ave. West, Bradenton, Florida 33529

The following property (or person) is concealed:

firearms which are evidence of a violation of Title 18, United States Code, Section 922 (g), (formerly Title 18,

United States Code, Section 1202), possession of a firearm by a fugitive from justice

Signature of Affiant

/s/ _____
Mark C. Broome
Special Agent,
Federal Bureau of Investigation

U.S. Magistrate

/s/ _____
Elizabeth A. Jenkins

Date
6/29/87

Red-Lined Copy of the
Search Warrant of the Residence

AFFIDAVIT

My name is Mark C. Broome. I am employed as a Special Agent (SA) with the Federal Bureau of Investigation (FBI). I have reason to believe that evidence of a crime, that is firearms, are being kept at the residence of a Thomas Jerome Dillon. In support thereof I state the following.

I, along with other agents of the FBI have been involved in an investigation of a federal fugitive matter in regard to a Thomas Jerome Dillon. I received information from other agents of the FBI that a Warrant for Arrest (a copy of it and the complaint are attached) was issued February 28, 1985 from the Southern District of Ohio for the arrest of Thomas Jerome Dillon for a violation of Title 21, United States Code, Section 841(a)(I).

According to information provided the FBI by the Knoxville, Tennessee Police Department I believe that Thomas Jerome Dillon is a suspect in a homicide which occurred on June 15, 1987 wherein a Richard Keith Nolley was the victim. Nolley's body was found at a motel in Knoxville. Airline records show Nolly was in Sarasota, Florida on June 13, 1987. According to Mr. Nolley's son, an acquaintance of his father's in the Sarasota area was a Tom Dillon. The deceased's address book referred to a TJD with a phone number which was subscribed to at 5922 30th Ave. West, Apt. 5922, Bradenton, FL 33529.

The investigation determined that the telephone subscriber was listed as David A. Schrimel. Further, the apartment was rented under that name as well as the Florida

Power & Light account. An account in the Island Bank was opened under that alias.

Using this information I, along with other agents of the FBI, went to that address to locate Thomas Jerome Dillon. On June 29, 1987 Mr. Dillon was arrested outside the doorway of his residence, which he had exited at our phone request and told to surrender.

At the time we called the man by the name of Tom Dillon. Mr Dillon was partially clothed ~~and allowed to step inside his apartment to dress. For the protection of those present~~ Mr. Dillon was asked if he had any weapons. He indicated yes, there is a gun above the television which was within a few feet of Mr. Dillon. I recovered a load .38 Colt Cobra where he indicated.

At the time I recovered the gun a cursory search was being made for any other persons in the apartment. He was then asked if he had any other guns. He responded yes. When requested to permit the FBI a consensual search of his apartment for weapons Dillon said no, that he did not even want the agents in his house. Simultaneous to the recovery of the gun a cursory search was made for other persons was made, none were found nor were any weapons seen in plain view. No search was made for concealed weapons.

Initially Mr. Dillon refused to give a name. Later he admitted his true name was Thomas Jerome Dillon.

I spoke to SA Warren Hilton, Bureau of Alcohol, Tobacco & Firearms who told me that Colt does no

manufacturing of handguns in the State of Florida, and any must he transported from out of state. No weapons are manufactured in Florida which are not involved in interstate shipment except in a certain type of carbine.

I spoke with Lt. David Mase of the Knoxville Police Department. He told me that Mr. Nolley was shot with a .22 caliber handgun. No one heard a shot in the area of the hotel room, a silencer may have been used. ~~Witnesses told the Knoxville police that two persons entered the room and food for two was delivered and consumed.~~

According to Lt. Mase an Air Sunshine Ticket for Ft. Lauderdale to Sarasota was purchased with Mr. Nolley's VISA Card for a June 13, 1987 flight at 7:30PM.

SA Eric Tarbox, FBI Columbus, Ohio, told me that he spoke with Mr. Dillon's landlady in Bradenton, who said she was on the same flight and observed Mr. Dillon with a man answering Mr. Nolley's description in the plane.

According to Lt. Mase, approximately 24 hours later, the night of June 14th, Mr. Nolley and another checked with the motel. Mr. Nolley was employed as an attorney, whose practice involved the representation of individuals involved in drug trafficking.

Lt. Mase also told me that $4,200 and other items of value were left in the hotel room after the murder.

~~SA Tarbox told me that a reliable confidential informant told him on March 11, 1987 that in March of 1986~~

he saw Thomas Jerome Dillon in possession of a .22 caliber handgun with a silencer, as well as a .32 caliber handgun with a silencer and a silencer for a .45 caliber weapon.

Based on the above I have reason to believe that there may be firearms in the residence of Thomas Jerome Dillon described above which he possessed while a fugitive for a federal offense.

/s/ _____
MARK C. BROOME
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Sworn to and subscribed before me this 29th day of June, 1987

/s/ _____
Elizabeth A. Jenkins
United States Magistrate

APPENDIX L

RED-LINED COPY OF THE SEARCH WARRANT OF THE SAFE DEPOSIT BOX

SEARCH WARRANT ON WRITTEN AFFIDAVIT

United States District Court
United States of America
Middle District of Florida-Tampa Division

v.

Safe Deposit Box Number 158D
First National Security Center

Docket No. 87-315M

TO: U.S. MARSHAL OR ANY OTHER AUTHORIZED LAW ENFORCEMENT AGENCY

Affidavit(s) having been made before me by the below-named affiant that he/she has reason to believe that (on the premises known as) Safe deposit box number 158D, Account Number 1102, Customer signature 6565 KB, First National Security Center, 640 South Washington Boulevard, Sarasota, Florida in the Middle District of Florida there is now being concealed certain property, namely

A .22 caliber handgun, silencer, U.S. currency, or any other handgun, which is evidence of a violation of Title 18, United

Red-Lined Copy of the
Search Warrant of the Safe Deposit Box

States Code, Sections 1952(a), 1952, and 922 (g) (formerly 1202) and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above-described and the grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

YOU ARE HEREBY COMMANDED to search on or before October 10, 1987 (not to exceed 10 days) the person or place named above for the property specified, serving this warrant and making the search (in the daytime - 6:00 A.M. to 10:00 P.M.) ~~(at any time in the day or night)~~ and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant to U.S. Magistrate Thomas G. Wilson as required by law.

Name of Affiant
SA Mark C. Broome

Signature of ~~Judge or~~ U.S. Magistrate
/s/ _____
Thomas G. Wilson

Date/Time Issued
10/1/87; 4:1* P.M.

Red-Lined Copy of the
Search Warrant of the Safe Deposit Box

AFFIDAVIT FOR SEARCH WARRANT

United States District Court
United States of America
Middle District of Florida-Tampa Division

v.

Safe Deposit Box, Number 158D
First National Security Center

Docket No. 87-315M

Name and Address of Judge or Federal Magistrate

U.S. Magistrate Thomas G. Wilson
U.S. Courthouse
611 North Florida Avenue
Tampa, FL

The undersigned being duly sworn deposes and says: That there is reason to believe that

on the premises known as Safe Deposit Box, Number 158D, Account Number 1102, Customer signature 6565 KB, First National Security Center, 640 South Washington Boulevard, Sarasota, Florida

The following property (or person) is concealed:

A .22 caliber handgun, silencer, U.S. currency, or any other handgun, which is evidence of a violation of Title 18,

Red-Lined Copy of the
Search Warrant of the Safe Deposit Box

United States Code, Sections 1952(a), 1952, and 922(g) (formerly 1202).

Signature of Affiant

/s/ _____
Mark C. Broome
Special Agent,
Federal Bureau of Investigation

Federal Magistrate

/s/ _____
Thomas G. Wilson, U.S. Magistrate

Date
10/1/87

Red-Lined Copy of the
Search Warrant of the Safe Deposit Box

RETURN

Date Warrant Received
10/1/87

Date and Time Warrant Executed
10/2/87 10:16 A.M.

Copy of Warrant and Receipt for Items Left With
Mr. Bob Orlee, Manager

Inventory Made in the Presence of
Special Agents (SA) C. Jerry Sellers and Mark C. Broome, FBI

Inventory of Property Taken Pursuant to the Warrant
As per attached sheet.

Red-Lined Copy of the
Search Warrant of the Safe Deposit Box

CERTIFICATION

I swear that this inventory is a true and detailed account of all the property taken by me on the warrant.

/s/ _____
Mark C. Broome

Subscribed, sworn to, and returned before me on this date.

/s/ _____
Thomas G. Wilson
U.S. Magistrate

10/5/87
date

Red-Lined Copy of the
Search Warrant of the Safe Deposit Box

The following is an inventory of items seized from a safety deposit box 158 D, at 1st National Security Center, 640 South Washington Blvd., Sarasota, Florida, pursuant to attached Search Warrant, dated October 1, 1987 and such warrant was executed on October 2, 1987, and items seized same date:

1) Blue safety deposit box, approximately 5" x 10" x 23"

2) Olive green Nylon zippered bag, approximately 15" long, "Abdalla" brand name

3) Black leather document pouch, approximately 9" x 5", with brass colored combination lock, "Jackpot" brand name, containing the, following items:

16 colored photographs of white female, children, and scenic ruins.

An AT & T international time wheel

.22 caliber long rifle casing, spent

Birth certificate of RICHARD KEITH NOLLEY

Maroon leather "Valentino" brand wallet containing;

3 credit cards in the name of NOLLEY

Eastern Airlines frequent traveler Card, in name of NOLLEY

Hawaiian Insurance Card in the name of

Red-Lined Copy of the
Search Warrant of the Safe Deposit Box

NOLLEY

Golf handicap Card in the name of NOLLEY

Social Security Card in the name of NOLLEY

6 business cards

Various foreign currency consisting of 28 bills

$900 in American Express Travelers Cheques in name of NOLLEY

4) .22 cal Ruger Mark 1 auto pistol, with silencer and clip, Serial number 11-0569

two .22 cal shells removed from above pistol

White cloth Phila Mint bag, with grey duct tape, from which above pistol was removed

5) .357 cal-Smith & Wesson Model 28-2 Revolver, Serial Number N513513, Blue Steel

Blue sock from which revolver was removed

Crown Royal bag from which revolver was removed

full box (50 cartridges) CCI Stinger .22 cal Long Rifle shells
(above cartridges in Crown Royal bag)

Red-Lined Copy of the
Search Warrant of the Safe Deposit Box

AFFIDAVIT

My name is Mark C. Broome. I am employed as a Special Agent (SA) of the Federal Bureau of Investigation (FBI). I have reason to believe that evidence of the crimes of interstate travel in a murder for hire scheme and possession of a weapon by a fugitive, that is, a .22 caliber pistol, silencer, and United States currency, is being kept in safe deposit box number 158D, First National Security Center, Sarasota, Florida. In support thereof, I state the following:

I, along with other Agents of the FBI, have been involved in an investigation of a Federal fugitive matter in regard to a Thomas Jerome Dillon, and an investigation of interstate travel in a murder for hire scheme and possession of a weapon by a fugitive involving Thomas Jerome Dillon.

On June 29, 1987, I received information from other Agents of the FBI that a warrant for arrest was issued February 28, 1985, from the Southern District of Ohio for the arrest of Thomas Jerome Dillon for a violation of Title 21, United States Code, Section 841(a)(1).

According to SA Eric Tarbox in Columbus, Ohio, Dillon had been a fugitive for over two years at that time. Prior to his fugitive status, Dillon lived in the Columbus, Ohio, area.

On September 28, 1987, SA Tarbox told me that while Dillon was in Columbus, Ohio, Peggy and Christopher Lurch disappeared from Columbus, Ohio, in 1982. Investigation into the disappearance by the Columbus Police Department

resulted in the indictment of William Wickline for the murder of the Lurches. In 1985, William Wickline was convicted in Columbus, Ohio, for the dismemberment murder of the Lurches. Teressa Kemp, one of the witnesses to this homicide, testified in the murder trial that after the dismemberment, Wickline called Thomas Dillon, who assisted in disposing of the body parts at various dumpsters in the Columbus, Ohio, area. During the Wickline investigation, Columbus homicide detectives conducted a search of a private storage locker where Wickline stored personal items. Among items found were a pair of handcuffs and a folding saw which contained calcified tissue analyzed to be bone located in the teeth of the saw. This was consistent with the witnesses' testimony that Wickline cut up the bodies. Thomas Dillon was wanted as a witness against Wickline in the murder trial. However, Dillon refused to make his whereabouts known. He was represented by an attorney in Columbus, who attempted to negotiate an agreement for his appearance, but an agreement was never consummated.

SA Tarbox told me that on September 23, 1987, Steve McKinnon, Special Agent, United States Customs Service, informed him that in January 1985, Jack Lierman Dickie was tried in the Western District of Texas, San Antonio, on charges of Mail Fraud in violation of the Arms Export Control Act. Dickie received a 20 year sentence. U.S. District Judge William S. Sessions presided over the case, and Wayne Speck was the Assistant United States Attorney who tried that case.

On September 28, 1987, SA Tarbox told me that Dickie is currently being tried in the U.S. District of Montana

on Mail Fraud and Conspiracy and RICO charges. It is alleged that Dickie and a co-defendant, Chester Adams, installed three victims as executives in Panamanian "shell" corporations. Dickie and/or the corporations were named as beneficiaries in the victims' insurance policies, and the victims were subsequently killed. Richard Keith Nolley, an attorney, is believed to have established the off-shore corporations and to have acted as a courier for Dickie.

SA Tarbox told me that in January 1987, while incarcerated in the Federal Correctional Institute (FCI), El Reno, Oklahoma, Dickie approached a reliable source and attempted to arrange for the murders of David Smith, the U.S. Customs Agent responsible for his indictment in Montana, and Wayne Speck, the Assistant United States Attorney who prosecuted him in Texas.

On September 29, 1987, SA Gene Stevens, FBI, Memphis, Tennessee, advised me that he spoke with this source on September 25, 1987, and the source told him that Dickie had a "hit list" with about five people on it. The source stated that the "hit list" included Customs Agent David Smith, a Deputy Sheriff who he did not name, and Wayne Speck, an Assistant United States Attorney. Additionally, the source stated that a Federal judge may have been on the list, but he did not refer to the judge by name. The source also stated that Dickie told him he had a lot of money "stashed away" outside of the country, and he planned to have someone he trusted go get it.

SA Tarbox told me that from July through mid August 1987, U.S. Customs Service Agents interviewed and

maintained contact with another reliable source, who was a former inmate at El Reno FCI, El Reno, Oklahoma. This source corroborated the information previously provided by the first source, and added that Dickie had a "hit list" that named the Federal Judge, William S. Sessions, who previously sentenced him, and an attorney referred to as Keith, who owed Dickie $150,000. This second source advised that "Keith" was at" the top of Dickie's "hit list."

According to information provided the FBI by the Knoxville, Tennessee, Police Department, ~~Thomas Jerome Dillon is a suspect in a homicide which occurred on June 15, 1987, wherein Richard Keith Nolley was the victim.~~ Nolley's body was found at a motel in Knoxville.

I spoke with Lieutenant David Mase, of the Knoxville Police Department. He told me that Nolley was shot with a .22 Caliber handgun. Spent cartridge casings were found in the area. No one heard a shot in the area of the hotel room, a silencer may have been used. ~~Witnesses told the Knoxville police that two persons entered the room, and food for two was delivered and consumed.~~ Airline records show Nolley was in Sarasota, Florida, on June 13, 1987. According to Nolley's son, an acquaintance of his father's in the Sarasota, Florida, area was a Tom Dillon. The deceased's address book referred to a TJD, with a telephone number which was subscribed to at 5922 30th Avenue West, Apartment 5922, Bradenton, Florida.

According to Lieutenant Mase, an Air Sunshine ticket for Fort Lauderdale, Florida, to Sarasota, Florida, was purchased with Nolley's VISA card for a June 13, 1987,

flight at 7:30 p.m.

SA Tarbox told me that he spoke with Dillon's landlady in Bradenton, Florida, who said she was on the same flight and observed Dillon, whom she knew by the name Schrimel, with a man answering Nolley's description in the airplane. Stacy Byron, the landlady, later told me that in a brief conversation she had with Dillon after the flight landed, he told her he had been in the Bahamas. Subsequently, I presented to Byron, a photograph of Nolley, which she identified as being the man she saw with Dillon on the airplane.

According to Lieutenant Mase, approximately 24 hours after the flight to Sarasota, Florida, the night of June 14, 1987, ~~Nolley and another person checked into the motel.~~ Nolley was employed as an attorney, whose practice involved the representation of individuals involved in drug trafficking. Lieutenant Mase also told me that $4,200 and other items of value were left in the hotel room after the murder.

On September 28, 1987, SA Tarbox told me that ~~on July 7, 1987,~~ he interviewed a confidential source concerning Thomas Dillon. The source advised that in March, 1986, he met Dillon at the request of a third person and took Dillon to the source's residence in Marion, Ohio. Dillon showed the source a .22 caliber handgun that was fitted with a homemade silencer. Dillon bragged to the source that the .22 had been used "in five hits." The source believed that Dillon meant that the gun had been used in five contract murders. The source further advised that he and Dillon test fired the silenced .22 into the crawl space beneath the source's house. No other

weapons had been fired into that crawl space.

SA Tarbox told me that on July 7, 1987, a search was made of the crawl space beneath the confidential source's house, and four spent .22 caliber cartridge casings were recovered On July 9, 1987, the recovered cartridge casings were sent to the FBI Laboratory for comparison to the spent cartridge casings recovered from the scene of No11ey's murder. On September 14, 1987, SA Jerry Wilkes, FBI Laboratory, advised SA Tarbox that based upon his opinion as an expert in firearms comparison and his examination of the spent casings in question, those recovered from the source's crawl space and those recovered from the murder scene in Knoxville, Tennessee, were fired from the same gun.

In June 1987, investigation of Agents in Sarasota, Florida, determined that the telephone subscriber corresponding to the telephone number in Nolley's address book was listed as David A. Schrimel. Further, the apartment was rented under that name as well as the Florida Power and Light account. An account in the Island Bank was opened under that alias.

Using this information, I, along with other Agents of the FBI, went to that address to locate Thomas Jerome Dillon. On June 29, 1987, Dillon was arrested outside the doorway of his residence, which he had exited at our phone request and told to surrender.

At the time we called the man by the name of Tom Dillon. Dillon was partially clothed ~~and allowed to step inside his apartment to dress. For the protection of those present,~~

Dillon was asked if he had any weapons. He indicated yes, there is a gun above the television, which was within a few feet of Dillon. I recovered a loaded .38 caliber Colt Cobra, where he indicated.

At the time I recovered the gun, a cursory search was being made for any other persons in the apartment. He was then asked if he had any other guns. He responded yes. When requested to permit the FBI a consensual search of his apartment for weapons, Dillon said no, that he did not even want the Agents in his house. Simultaneous to the recovery of the gun, a cursory search was made for other persons. None were found nor were any weapons seen in plain view. No search was made for concealed weapons.

Initially Dillon refused to give a name. Later he admitted his true name was Thomas Jerome Dillon.

Later, on June 29, 1987, I, along with other Agents of the FBI, executed a search warrant authorized by U.S. Magistrate Elizabeth Jenkins at the residence of Thomas Jerome Dillon attempting to locate any firearms in the possession of the fugitive, Dillon, also known as Schrimel. A .22 caliber handgun was not located; however, two other handguns were found in the headboard area of a bed.

I spoke to SA Warren Hilton, Bureau of Alcohol, Tobacco and Firearms, who told me that Colt does no manufacturing of handguns in the State of Florida, and any must be transported from out of state. No weapons are manufactured in Florida which are not involved in interstate shipment except a certain type of carbine.

Red-Lined Copy of the
Search Warrant of the Safe Deposit Box

During the course of the search, ~~large amounts of gold jewelry,~~ filling several trays, were observed in plain view. ~~Also observed in plain view, was a key envelope from the First National Security Center, Sarasota, Florida.~~

Additionally, I observed in plain view a ticket envelope from Executive Travel in Bradenton, Florida, indicating Dillon, using the name David Schrimel, intended to fly to Dallas, Texas, on July 3, 1987.

~~On September 17, 1987, Bob Olree, Manager, First National Security Center, 640 South Washington Boulevard, Sarasota, Florida, told me that the First National Security Center is a private firm that rents safe deposit boxes similar to those found in banks. Olree said that his firm does not require customers to give their names or Social Security Numbers to open a safe deposit box. He said that a photograph is taken of each customer when opening a box, and the customer selects a series of letters and numbers to serve as his signature. Only an individual matching the photograph is permitted access to the box, even if another may have the key.~~

~~On September 22, 1987, I displayed a known photograph of Thomas Jerome Dillon to Bob Olree. This photograph had been taken on June 29, 1987, by the U.S. Marshal's Service, subsequent to my arrest of Dillon on that date. Olree compared this photograph with the customer photographs in his files, and he stated that the person depicted in his files as the holder of safe deposit box number 158D was identical to Thomas Jerome Dillon. I, along with SA Louis E. Barragan, FBI, also viewed these two photographs and agreed~~

~~that the photographs depicted the same person who we had both seen on June 29, 1987. Olree stated that the photograph in his files was taken on June 19, 1987, which was the same date the safe deposit box was opened. Olree stated that the box has not been entered since June 19, 1987, and that the person he identified as Thomas Jerome Dillon was the only person authorized to enter the safe deposit box. Olree advised that this particular safe deposit box was further identified as Account Number 1102, utilizing customer signature 6565 KB. He later described the dimensions of the box as being five inches high, ten inches wide, and 23 inches long. Based upon my training and experience as an FBI Agent, this is sufficient space to deposit an .22 caliber handgun and other items.~~

On September 29, 1987, Maria Smith, Travel Agent, Executive Travel Agency, confirmed that Thoams Jerome Dillon, known to her agency as David Schrimel, had purchased a ticket for travel from Sarasota/Bradenton, Florida, to Dallas/Fort Worth, Texas, departing on July 3, 1987. His scheduled return from Dallas/Fort Worth to Sarasota/Bradenton was scheduled for July 8, 1987. The ticket was issued for Delta Airlines and included connections in Atlanta, Georgia, on both the departing and returning portions of the flight. Smith further advised that it is not possible to fly on scheduled flights directly from Sarasota/Bradenton to San Antonio, Texas. She stated that any such flights would have connections in Atlanta, Dallas/Fort Worth, or both.

Based upon the above, affiant has probable cause to believe that Thomas Jerome Dillon was involved in the murder of Richard Keith Nolley. Dillon is an admitted contract murderer. He owns the murder weapon. Dillon

traveled with the victim from the Bahamas, arriving in Sarasota, Florida, within 24 hours of the murder.

Affiant believes he has probable cause to believe that Jack L. Dickie hired Dillon to kill Nolley and Judge Sessions. Dickie is on trial ~~for his involvement in having individuals involved in his drug dealings in the Bahamas killed.~~ He has attempted to hire someone to kill a lawyer named "Keith," whom he believes owes him $150,000, Judge Sessions, who sentenced him, and an Assistant United States Attorney who prosecuted him. Nolley was an attorney who was involved in the RICO offense being tried in Montana, in that he is believed to have set up the off-shore corporation and been a courier for Dickie. He traveled from the Bahamas with Dillon, a known drug offender, to Sarasota, Florida. Dickie told a source he had money off-shore and would have someone obtain it for him. Further, Dillon had arranged to travel to Texas shortly after the Nolley killing, ~~by a route which would easily permit him to travel to San Antonio, Texas, the home of Judge Sessions.~~

Dillon was a Federal fugitive living under an assumed name in a Bradenton, Florida, apartment, and in possession of at least three handguns.

Further, affiant has probable cause to believe that the .22 caliber weapon and silencer used in the killing, which Dillon owns, as well as the payment for the Nolley murder, ~~may be in the safe deposit box.~~ Dillon has been involved in a homicide in the past wherein implements of the murder were secreted in a private storage facility. Neither the .22 caliber handgun and silencer owned by Dillon nor any large amounts

of money were located in his residence during the arrest and execution of the search warrant. However, ~~the key to the safe deposit box was located.~~ Based upon ~~the presence of much jewelry in~~ the residence, affiant believes the safe deposit box, which was rented four days after the murder, was not opened solely to protect valuables, but to secrete evidence of a crime as had been done in the Lurch murders.

/s/ _____
MARK C. BROOME
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Sworn to and subscribed before me this 1st day of October, 1987

/s/ _____
UNITED STATES MAGISTRATE

APPENDIX M

REPORT
of the
FBI
Laboratory

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

December 21, 1987

FBI File No. 95-278939
Lab No. 70922030 S QY
Your No. 870615-0199

To: Mr. Robert A. Marshall
Chief of Police
800 East Church Avenue
Knoxville, Tennessee 37915

Attention: Mr. J.E. Humphrey
Specialist

Re: UNKNOWN SUSPECT;
RICHARD K. NOLLEY - VICTIM;
HOMICIDE

Examination requested by: Addressee

Reference: Letter dated September 16, 1987

FBI Report

Examination requested: Firearms

Specimens :

Q1 Bullet from victim in U.S. Customs Service care

Q2,Q3 Two bullets from NOLLEY

ALSO SUBMITTED:

Three latent fingerprints from body

Keyring and keys

2- FBI-Oklahoma City

2- FBI-Tampa (89B-181, (PRA-S)

2- FBI-Cincinnati (12F-83) (CRA)

This examination has been made with the understanding that the evidence is connected with an official investigation of a criminal matter and that the Laboratory report will be used for official purposes only, related to the investigation or a subsequent criminal prosecution. Authorization cannot be granted for the use of the Laboratory report in connection with a civil proceeding.

Result of examination:

Specimen Q1 is a .22 caliber lead bullet which appears to have been fired from a barrel rifled with six lands

and grooves, right twist. This bullet bears no microscopic marks of value for comparison purposes.

Specimen Q2 is a .22 caliber lead bullet which bears marks indicating that it was fired through a silencer. Although Q2 bears limited microscopic marks of value for comparison purposes, no conclusion could be reached as to whether it was fired from the K2 pistol, submitted by the Tampa Division of the FBI under Laboratory Number 71009007 S QY in their case entitled "Jack Lierman Dickie; U.S. District Court Judge, William S. Sessions-Victim; Richard Keith Nolley, Victim (Deceased); Conspiracy To Injure Officer (CIO) ITAR-MURDER." No conclusion could be reached as to whether Q2 and Q3 bullets were fired from a single barrel.

The Q3 bullet was identified as having been fired from the K2 pistol, described above.

The submitted items are being returned to your office under separate cover by registered mail.